853

SUPREME COURT OF THE UNITED STATES.

No. ~~251.~~ 164

JOHN R. MOFFITT, Pl'ff in Error,

vs.

ABRAHAM GARR, JOHN M. GARR, & WILLIAM G. SCOTT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

GIDEON, Printer.

SUPREME COURT OF THE UNITED STATES.

No. 251.

JOHN R. MOFFITT, Pl'ff in Error,

vs.

ABRAHAM GARR, JOHN M. GARR, & WILLIAM G. SCOTT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

INDEX.

	Original.	Print.
Summons	1	3
Return	2	3
Declaration	3	4
Plea	10	8
Demurrer	11	8
Bond	12	9
Certificate	14	10
Writ of Error	15	10
Citation	17	11
Acknowledgment of service	18	11
Assignment of Errors	19	12

AT a Circuit Court of the United States for the Seventh Circuit and Southern District of Ohio, begun and held at the court-house in the city of Cincinnati, on the third Tuesday, being the seventeenth day of April, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States the eighty-fourth: Present, the Honorable Jno. McLean and Honorable Humphrey H. Leavitt, Judges of said court, the following proceedings were had, to wit:—

JOHN R. MOFFITT
vs.
ABRAHAM GARR, JOHN M. GARR, and WILLIAM G. SCOTT. } 1181.

Be it remembered, that heretofore, to wit, on the ninth day of March, in the year of our Lord one thousand eight hundred and fifty-nine, a summons was issued out of the clerk's office of said court, directed to the marshal of said district, returnable on the fourth Tuesday of March, in the year last aforesaid, and clothed in the words and figures as follows, to wit:—

(Summons.)

United States of America, Southern District of Ohio, *ss.*

The President of the United States of America, to the Marshal of the Southern District of Ohio, greeting:—

You are hereby commanded to summon Abraham Garr, John M. Garr, and William G. Scott, citizens of and residents in the State of Ohio, if they be found in your district, to be and appear in the Circuit Court of the United States for the Southern District of Ohio aforesaid, at Cincinnati, on the fourth Tuesday in the month of March, 1859, to answer unto John R. Maffitt, citizen of and resident in the State of of a plea of case damages, $20,000 $^{00}_{100}$, and have you then and there this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the United States, this 9th day of March, A. D. 1859, and in the 83d year of the independence of the United States of America.

Attest: [SEAL.] JOHN McLEAN, Jr., Clerk.

On the back of said writ is the following endorsement, to wit:—"Suit brought to recover damages for the infringement of a patent granted to plaintiff, November 30, 1852, and surrendered and reissued, March 23d, 1858, damages $20,000.

LEE & FISHER, Pl'ff's Att'ys.

And on the fourth Tuesday of March, to which day this writ was returnable, came the marshal aforesaid, and made return of said

writ with his proceedings endorsed thereon, also acknowledgment of security for costs, and which are in the words and figures following, to wit: "Received this writ March 9th, 1859, and on the same day I served John M. Gaar personally by copy, Abraham Gaar and William G. Scott, not found.

LEWIS W. SIFFORD, U. S. Marshal.
By W. L. MANSON, Deputy.

Also the following acknowledgment of security for costs. "Ronzo Evans, Daniels & Co., acknowledge themselves security for all costs for which the plaintiff may be liable in this suit (see precipe). And now here, to wit, on the twenty-second day of March, in the year last aforesaid, came the plaintiff by his attorneys, and file his certain declaration, which is clothed in the words and figures following, to wit:—

(Dec'n.)

Circuit Court of the United States, for the Seventh Circuit and Southern District of Ohio, February Term, A. D. 1859.

JOHN R. MOFFITT
vs.
ABRAHAM GAAR, JOHN M. GAAR, and WILLIAM G. SCOTT. } Trespass on the Case.

The plaintiff, John R. Moffitt, comes and complains of the defendants, Abraham Gaar, John M. Gaar, and William G. Scott, in a plea of trespass on the case for that, whereas the said John R. Moffitt, before and at the time of the making of the letters-patent, and of the committing the grievances by the said defendants here inbefore next mentioned, was the original and first inventor of a certain new and useful "improvement in grain separators," to wit, at St. Louis, in the State of Missouri, to wit, in the district aforesaid, and thereupon, heretofore, to wit, on the thirtieth of November, A. D. 1852, at the city of Washington, to wit, in the district aforesaid, certain letters patent under the hand of the Secretary of the Interior of the United States, with the seal of the patent office of the United States thereto affixed, countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, were granted to the said John R. Moffitt (which letters patent, or a duly authenticated copy thereof, the plaintiff now brings into court), whereby was granted and secured to the said John R. Moffitt, his heirs, administrators, or assigns, for the term of fourteen years from said 30th day of November, A. D. 1852, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement, a full and exact description of which, with the mode of constructing and applying the same, is set forth in the written specification or description of

the said John R. Moffitt, in the words of the said Moffitt, filed in the Patent Office of the United States, before the granting of said letters patent, and made part of the same as by reference to the aforesaid specification or description (here brought into court as aforesaid), will more fully and at large appear. The plaintiff further says, that said invention and improvement so patented was new and useful, that the said John R. Moffitt was, at the time of his application for said patent, a citizen of the United States, that he was the original and first inventor of said invention and improvement so patented, and that the same was not known or used before his said invention, and was not in public use or on sale with his consent or allowance, for more than two years before his application for said letters patent.

The plaintiff further says that afterwards, to wit, on the twenty-third day of March, A. D. 1858, the said John R. Moffitt surrendered to the Commissioner of Patents said original patent (so granted as aforesaid on said 30th day of November, 1852), in consequence of a defective and insufficient description and specification of said invention, and such proceedings were then had that on said twenty-third day of March, 1858, a new patent was granted to said plaintiff on an amended description and specification previously filed in the patent office for the same invention and improvement, and in accordance with said amended description and specification which said new letters patent bear date March 23d, 1858, under the hand of the Secretary of the Interior of the United States, with the seal of the patent office thereto affixed, and countersigned by the Commissioner of Patents of the United States, and were duly issued and granted according to law, whereby there was granted to said plaintiff, his heirs, administrators, and assigns, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said invention and improvement, for the term of fourteen years from the said 30th day of November, 1852, as by reference to said amended description and specification (here brought into court with said reissued letters patent as aforesaid), will more fully and at large appear.

The plaintiff further says that he has heretofore made, constructed, used, and vended to others to be used, said invention and improvement to his great advantage and profit, to wit, at the district aforesaid. Yet the said defendants well knowing the premises, but contriving and wrongfully intending to injure the said plaintiff, and to deprive him of the profits, benefit, and advantage which he might and otherwise would have derived and acquired from the making, constructing, using, vending to others to be used, the said invention and improvement after the making of said letters patent, and after the reissue thereof on said 23d day of March, 1858, as aforesaid, and within the said term of years in the said letters patent mentioned, to wit, on the twenty-fourth day of March, A. D. 1858, at the county of Wayne, in the State of Indiana, to wit, at the dis-

trict aforesaid, and on divers other days and times between that day and the commencement of this suit, unlawfully and unjustly, against the will of said plaintiff, and without the leave or license of the said plaintiff, did make a great number, to wit, one thousand grain separators, otherwise called threshing machines, on the improved plan of the plaintiff, in imitation of said invention, in breach of said letters patent, and in violation and infringement of the exclusive right thereto so as aforesaid acquired by the plaintiff and contrary to the form of the statutes in such case made and provided, and whereby the said plaintiff, patentee as aforesaid, has been greatly injured and deprived of a great part of the profits and advantages which he might and otherwise would have derived and acquired from the said invention, to wit, at the district aforesaid, and also for that whereas the said John R. Moffitt, before and at the time of the making of the letters patent, and of committing the grievances by the said defendants hereinafter next mentioned, was the original and first inventor of a certain new and useful improvement in grain separators, to wit, at Saint Louis, in the State of Missouri, to wit, in the district aforesaid, and thereupon heretofore, to wit, on the thirtieth day of November, A. D. 1852, at the city of Washington, to wit, in the district aforesaid, certain letters patent, under the hand of the Secretary of the Interior of the United States, with the seal of the patent office of the United States thereto affixed, countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, were granted to the said John R. Moffitt (which letters patent or a duly authenticated copy thereof, the plaintiff now brings into court), whereby was granted and secured to the said John R. Moffitt, his heirs, administrators, and assigns, for the term of fourteen years from said 30th day of November, A. D. 1852, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement, a full and exact description of which, with the mode of constructing and applying the same, is set forth in the written specification or description of the said John R. Moffitt, in the words of the said Moffitt, filed in the Patent Office of the United States before the granting of said letters patent, and made part of the same, as by reference to the aforesaid specification or description here brought into court as aforesaid, will more fully and at large appear.

The plaintiff further says, that said invention and improvement so patented was new and useful; that the said John R. Moffit was at the time of his application for said patent a citizen of the United States; that he was the original and first inventor of said invention and improvement so patented, and that the same was not known or used before his said invention, and was not in public use or on sale with his consent or allowance for more than two years before his application for said letters patent.

The plaintiffs further say, that afterwards, to wit, on the twenty-

third day of March, A. D. 1858, the said John R. Moffit surrendered to the Commissioner of Patents said original patent (so granted on said 30th day of November, 1852, as aforesaid), in consequence of an insufficient and defective description and specification of said invention, and such proceedings were then had, that on said twenty-third day of March, A. D. 1858, a new patent was granted to said plaintiff on an amended description and specification previously filed in the Patent Office for the same invention and improvement, and in accordance with said amended description and specification, which said new letters patent bear date March 23d, 1858, under the hand of the Secretary of the Interior of the United States, with the seal of the patent office thereto affixed, and countersigned by the Commissioner of Patents of the United States, and were duly issued and granted according to law, whereby there was granted to the said plaintiff, his heirs, administrators, and assigns, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement for the term of fourteen years from the said 30th day of November, 1852, as by reference to said amended description and specification (here brought into court with said reissued letters patent as aforesaid) will more fully and at large appear.

The plaintiff further says, that he has heretofore made, constructed, used, and vended to others to be used, said invention and improvement to his great advantage and profit, to wit, at the District aforesaid. Yet the said defendants well knowing the premises, but further contriving and wrongfully intending to injure the said plaintiff, and to deprive him of the profits, benefit, and advantage which he might and otherwise would have derived and acquired from the making, constructing, using, vending to others to be used, the said invention and improvement after the making of said letters patent after the reissue thereof on said twenty-third day of March, 1852, as aforesaid, and within the said term of years in the said letters patent mentioned; afterwards, to wit, on the twenty-fifth day of March, A. D. 1858, at the county of Wayne, in the State of Indiana, to wit, in the District aforesaid, and on divers other days and times between that day and the commencement of this suit, unlawfully and unjustly, against the will of said plaintiff, and without the leave or license of the said plaintiff, did send to others to be used a great number, to wit, one thousand grain separators, otherwise called threshing machines, made according to plaintiffs' improvement, in imitation of said invention in breach of said letters patent, and in violation and infringement of the exclusive right thereto, so as aforesaid acquired by the plaintiff, and contrary to the form of the statutes in such case made and provided, whereby the said plaintiff, patentee as aforesaid, has been greatly injured, and deprived of a great part of the profits and advantages which he might and otherwise would have derived and acquired from the said invention, to wit, at the district aforesaid,

to the actual damage of the plaintiff, twenty thousand dollars, and therefore he brings his suit by his attorneys, Lee & Fisher.

And now here, to wit, on the fifth day of May, in the year last aforesaid, "On motion of the said defendant, by his attorney, it is ordered that this case stand continued to the next October term, with leave to the said defendant to plead within sixty days from this date."

(Cont'd.)

And thereupon on the twenty-fifth day of October, in the term and year last aforesaid, came the defendant and filed his certain plea, clothed in the words and figures as follows, to wit:—

(Plea.)

Circuit Court of the United States, Southern District of Ohio.

JOHN M. GAAR
ads.
JOHN R. MOFFITT.

And now comes the said John M. Gaar and says, that the said John R. Moffitt ought not further to maintain this action against him, because, he says, that since the commencement thereof, and before the 17th of May, 1859, to wit, on the day of the said John R. Moffit surrendered to the United States the patent before that time issued to him, and for the alleged infringement of which this action is brought, and this he is ready to verify, whereupon he prays judgment if the said John R. Moffit ought further to maintain this action against him.

HENRY STANBERRY,
N. C. McLEAN,
Att'ys for Def't.

Thereupon, on the twenty-fifth day of October, in the year last aforesaid, the said plaintiff, by attorney, filed their certain demurrer to said plea clothed in the words and figures as follows, to wit:—

(Demurrer.)

Cir. Court U. S., South'n Dist. of Ohio.

JNO. R. MOFFITT
vs.
ABRAHAM GAAR & al.
No. 1181.

Now comes the plaintiff and says that he ought not to be barred of his aforesaid action by reason of anything in defendant's plea contained, because he says that the said plea and the matters therein contained are not sufficient in law to bar the aforesaid action, and that he is not bound by law to answer the same, all which he is ready to verify, wherefore he prays judgment, and that his damages may be assessed, &c. LEE & FISHER, Pl'ff's Att'ys.

And thereupon, on the first day of December, in the year last aforesaid, "this cause came on to be heard upon the demurrer of the said plaintiff to the plea of the said defendant and was argued by counsel, whereupon the court not being fully advised in the premises take the same under consideration, and this cause is continued."

(Cont'd.)

And cause was, to wit, to the term of April, in the year of our Lord one thousand eight hundred and sixty, continued. And on the eighteenth day of April, in the term and year last aforesaid, "this cause came on to be heard upon the demurrer of the said plaintiff to the plea of said defendant and was argued by counsel, and the court being fully advised in the premises, are of opinion that said plea and the matters therein contained are sufficient in law to bar said plaintiff from his action against said defendant. Therefore it is considered that said defendant go hence without day and recover of said plaintiff his costs in this behalf expended, taxed at $ and execution is awarded therefor. To all which the plaintiff excepts.

And on the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and sixty, the aforesaid plaintiff filed a certain bond in the words and figures following, to wit:—

(Bond.)

"Know all men by these presents, that we, Thomas L. Daniels and John O. Fenall, are held and firmly bound unto Abraham Gaar, John M. Gaar, and William G. Scott, in the penal sum of five hundred dollars, to the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, our heirs, executors, and administrators, sealed with our seals, and dated this 24th day of April, A. D. 1860.

The condition of the above obligation is such that, whereas the said John R. Moffitt has obtained an allowance of a writ of error upon a certain *a certain* judgment rendered against him in favor of the said Abraham Gaar, John M. Gaar, and William G. Scott, in the Circuit Court of the United States for the Seventh Circuit and Southern District of Ohio, to the Supreme Court of the United States.

Now, if the said John R. Moffitt shall pay the full amount of the condemnation in said Supreme Court, and costs, in case a judgment shall be entered in favor of the appellee, then this obligation shall be void, otherwise in full force and virtue in law.

THOS. L. DANIELS, [SEAL.]
JOHN O. FENALL. [SEAL.]

Witness—S. E. BROWNE,
WM. O. FENALL.

Approved by JOHN McLEAN, JR., Clerk, &c.
Approved by H. H. LEAVITT, Judge, &c.

State of Ohio, Miami County, *ss.*

Thomas L. Daniels and John O. Fenall, being duly sworn, make oath and say, that they are worth the sum of one thousand dollars after paying all their debts.

THOS. L. DANIELS.
JNO. O. FENALL.

Sworn to before me and subscribed in my presence by the said Thomas L. Daniels and John O. Fenall, this 24th day of April, A. D. 1860.

[SEAL.] SAM. E. BROWNE,
Notary Public, Miami Co., Ohio."

United States of America, Southern District of Ohio, *ss.*

I, Jno. McLean, Jr., Clerk of the Circuit Court of the United States within and for said District, do hereby certify the foregoing to be a true and accurate transcript of the record of the proceedings had in said court in the case of John R. Moffitt *vs.* Abraham Gaar et al., as the same remains of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, this 24th day of November, A. D. 1860, and in the 85th year of the independence of the United States of America.

[SEAL.] Attest: JNO. McLEAN, JR.,
Clerk, &c.

Supreme Court of the United States, United States of America, *ss.*

The President of the United States of America, to the honorable the judges of the Circuit Court of the United States for the Seventh Circuit and Southern District of Ohio, greeting:—

Because in the record and proceedings, and also in the rendition of a judgment in a plea, which is in the said Circuit Court, before you between John R. Moffitt, plaintiff, and Abraham Gaar, John M. Gaar, and William G. Scott, defendants, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf. You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the first Monday in the month of December next, in the said Supreme Court, then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this twenty-fifth day of

April, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States of America the eighty-fourth.

[SEAL.] Attest: JNO. McLEAN, JR.,
Clerk of the Circuit Court of the United States for the Seventh Circuit and Southern District of Ohio.

Allowed by H. H. LEAVITT,
Judge of the U. S. Circuit Court,
Southern District of Ohio.

Endorsed: U. S. Circuit Court, Southern District of Ohio, 1185. John R. Moffitt *vs.* Abraham Gaar et al. Writ of Error.

The United States of America, Supreme Court of the United States.

To Abraham Gaar, John M. Gaar, and William G. Scott, greeting:

Whereas John R. Moffitt obtained the allowance of our writ of error to the judges of the Circuit Court of the United States for the Seventh Circuit and Southern District of Ohio directed, to remove into the said Supreme Court, to be holden at the City of Washington, on the first Monday in the month of December next, the record of a certain plaint, process, proceedings and judgment in an action of trespass on the case wherein you, the said Abraham Gaar, John M. Gaar, and William G. Scott, in that action lately recovered against the said John R. Moffitt, a judgment and costs, as by the said record in the said Circuit Court remaining appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said John R. Moffitt, we are informed, and our said writ of error granted, issued and allowed as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be. You are, therefore, hereby commanded and cited, to be and appear before the judges of the said Supreme Court, at the City of Washington, at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the Honorable Roger B. Taney, Chief Justice of the United States of America, this 25th day of April, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States of America the 84th.

[SEAL.] H. H. LEAVITT,
Judge of the Circuit Court of the U. S. South. Dist. of Ohio.

Rec'd a copy of this citation, Nov. 26th, 1860.
HENRY STANBERY and
N. C. McLEAN,
Att'ys for Gaar & Co.

JOHN R. MOFFITT
vs.
ABRAHAM GAAR, JOHN M. GAAR, and WM. G. SCOTT.

Supreme Court U. S., Dec. Term, A. D. 1860.

John R. Moffitt, the plaintiff in error, comes and says, that in the aforesaid record and proceedings there is manifest error in this, to wit:—

1st. The Circuit Court below erred in overruling the demurrer of plaintiff to the plea of defendants.

2d. That the judgment should have been rendered for the plaintiff instead of defendants.

Wherefore he asks that said judgment be reversed and he be restored to all things lost thereby.

GEORGE M. LEE and
SAM'L S. FISHER,
Att'ys for Pl'ff in Error.

Filed 3d December, 1860.